

**Meeting of the Central Valley Flood Protection Board  
September 23, 2010**

**Staff Report**

**Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement  
execution between the Central Valley Flood Protection Board and Levee District  
No.1 for the Lower Feather River Setback Levee Project at Star Bend**

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Item

Consider execution of an Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (OMRR&R) between the Central Valley Flood Protection Board (Board) and Levee District No. 1 of Sutter County (LD-1).

Applicant

Levee District No.1 (also referenced herein as the Local Maintaining Agency – LMA)

Location

A 3,400 foot-long setback levee has been constructed at Star Bend on the Feather River and is part of the strategy to provide 200-year flood protection to the surrounding area, inclusive of the southern portions of Yuba City. This setback levee was constructed by LD-1 under the provisions of the DWR Early Implementation Program (EIP). In addition to the setback levee, existing irrigation facilities were modified in order to conform to the latest safety design standards and the new levee configuration. The project also includes eco-restoration of approximately 21 acres of riparian habitat containing Valley Elderberry Longhorn Beetle (VELB) mitigation and habitat enhancement efforts on the riverside of the new setback levee. This area may be annexed into the adjoining riparian habitat enhancement area of the O'Conner Lakes Wildlife Unit of the Feather River State Wildlife Area.

Description

LD-1 has completed construction of a new setback levee at Star Bend near River Mile 18.0 on the right bank of the Feather River. Reconfiguration of the levee at Star Bend has been one of LD-1's highest priorities for levee rehabilitation. The setback levee addresses flooding concerns at this site caused by the large bend of the Feather River and historical observance of underseepage, potential erosion, and subsidence. A 2004 DWR study estimated the channel migration to be 1.7 feet per year and, according to Wood Rogers engineers' estimates, the existing levee could be endangered in 10 to 20 years. A levee breach at this location would impact southern portions of Yuba City, developing communities, and farming interests, affecting nearly 25,000 people.

All major work on the levee system and adjoining irrigation system modifications were completed November 2009 under Board encroachment permits 18191 BD, 18437 BD, and 18438 BD. The Funding Agreement dated June 18, 2008 between LD-1 and the State of California Department of Water Resources (DWR) requires an OMRR&R agreement with the Board which sets forth the obligation for LD-1 to perform the OMRR&R work for the project.

The projected costs for construction are estimated to be \$13.7 million total with a State share of \$10.7 million.

#### CEQA Determinations:

Board staff has prepared the following CEQA determination:

LD-1 is responsible for procuring all necessary environmental documentation and permits necessary for the project. Board staff, DWR, and other responsible agencies have reviewed and approved all submittals to date and the project was completed in compliance with these permits and documentation.

#### Staff Comments and Endorsements:

- The LMA has reviewed and signed the OMRR&R Agreement in June of 2010 and requests that it be executed by the Board.
- This OMRR&R agreement between the Board and LD-1 must be executed in accordance with the LD-1 Funding Agreement. This will allow proper closeout of the project and insure that DWR Early Implementation Program (EIP) funding is not interrupted. LD-1 is bound by their EIP funding agreements to enter into an OMRR&R Agreement with the Board or funding for the Project may be in default of the funding agreements.
- Board staff and legal counsel have prepared the OMRR&R Agreement with LMA counsel and herein provided a copy, approved in form and sufficiency by Board legal counsel.

#### Section 8610.5 Considerations

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board will make its decision based on the evidence in the OMRR&R Agreement and attachments, this staff report, and any other evidence presented by any individual or group.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

In considering this OMRR&R Agreement, the Board has used the best available science relating to the issues presented by all parties. On the important issue of hydraulic impacts, the project will result in a better engineered levee with no adverse upstream or downstream hydraulic impacts.

3. Effects of the decision on the entire State Plan of Flood Control:

This project has positive effects on the State Plan of Flood Control as it results in a better-constructed levee system for the Feather River and will contribute to provide the Central Valley Flood Protection Plan's goal of 200-year protection for urban areas.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

Although the impacts of hydrology, climate, and development are not specifically addressed in the OMRR&R Application, previous and future project designs and environmental documentation have addressed and will continue to address these concerns through public comment periods and agency reviews. Negative impacts have been mitigated as a result of this process.

#### Staff Recommendation

Staff recommends that the Board authorize Board President Carter to take the necessary actions to execute the attached OMRR&R Agreement with LD-1.

#### List of Attachments

- A. OMRR&R Agreement
- B. Construction Site Location Map, Star Bend Setback levee, dated December 15, 2009
- C. Resolution 10-20

**OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND  
REHABILITATION AGREEMENT BETWEEN  
The Central Valley Flood Protection Board and Levee District No. 1 of Sutter  
County  
for  
The Lower Feather River Setback Levee Project at Star Bend**

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement ("OMRR&R Agreement") is entered into by and between the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board"), and Levee District No. 1 of Sutter County ("Local Maintaining Agency" and "Funding Recipient"), on this \_\_\_\_\_ day of \_\_\_\_\_, 2010 in view of the following circumstances:

1. The Feather River Setback Levee Project at Star Bend ("EIP Project") is a modification of the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.
2. State funding has been provided for the EIP Project:
  - The voters of California approved Propositions IE and 84 on November 7, 2006, making available bond funds for flood control work and other purposes.
  - The State, acting by and through the Department of Water Resources ("Department"), has solicited applications for early implementation funding for its State-Federal Flood Control System Modifications Program.
  - As a result, a Funding Agreement between the State of California and Levee District No. 1 of Sutter County for the Feather River Setback Levee Project at Star Bend has been signed. ("Funding Agreement").
  - The Funding Agreement provides that Levee District No. 1 of Sutter County as the Funding Recipient shall be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the EIP Project. Under this OMRR&R Agreement the Board will oversee OMRR&R for the EIP Project for the State, as part of the State Plan of Flood Control.
  - The Department has agreed to enter into the Funding Agreement with the Funding Recipient on the condition that it also enter into the OMRR&R Agreement.
3. It is not expected that the federal government will provide funding for the EIP Project at this time, but in anticipation that federal funds may become available eventually:
  - The Funding Agreement requires the Funding Recipient to seek credit for the expenditures made under the Funding Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("Corps"), and to enter into agreements necessary to obtain credit or reimbursement from the Corps.
  - The parties agree that this OMRR&R Agreement may be superseded by one or more agreements acceptable to the Corps and the Board that gives satisfactory assurances to the federal government and the Board that the required local cooperation will be furnished in connection with the EIP Project.

4. The Local Maintaining Agency agrees that it already has responsibility for OMRR&R for existing portions of the Project (as hereinafter defined) under California Water Code Section 12642 which states, and under which the State contends, that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Local Maintaining Agency provides the Board with the assurances specified in this OMRR&R Agreement that Local Maintaining Agency will be responsible for OMRR&R of the EIP Project upon its completion; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, and employees, as well as but not limited to their successors and assigns, free and harmless from any and all claims and damages arising from OMRR&R of the EIP Project.
6. The Board and the Local Maintaining Agency have agreed that this OMRR&R Agreement will set forth not only their agreement with respect to OMRR&R for the EIP Project, but also for all of the federally and State authorized flood facilities related to the EIP Project that are within the Local Maintaining Agency's boundaries.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

**"Board:"** The State of California Central Valley Flood Protection Board or any successor thereto.

**"Corps:"** The United States Army Corps of Engineers.

**"Department:"** The State of California Department of Water Resources.

**"EIP Project:"** The project described in the Overall Work Plan described in the Funding Agreement.

**"Functional Portion of the EIP Project:"** A completed portion of the EIP Project to be constructed under the Overall Work Plan which is determined by the Board to be suitable to operate and maintain in advance of completion of construction of the entire EIP Project.

**"Funding Agreement:"** Agreement between the State of California Department of Water Resources and Levee District No. 1 of Sutter County dated June 16, , 2008 as amended.

**"Funding Recipient:"** Levee District No. 1 of Sutter County

**"Local Maintaining Agency:"** Levee District No. 1 of Sutter County being the agency which will assume responsibility for OMRR&R for any Functional Portion of the EIP Project, the EIP Project, and the Project.

**"OMRR&R:"** Operation, maintenance, repair, replacement, and rehabilitation of the Project.

**"OMRR&R Agreement:"** This agreement between the State of California Department of Water Resources and Levee District No. 1 of Sutter County.

**"Overall Work Plan:"** The plan described in the Funding Agreement in Paragraph 22(a), as amended, and Exhibit A-1, as amended.

**"Post Construction Performance Reports:"** The reports required by Funding Agreement Paragraph 22(e), as amended.

**"EIP Project:"** The project described in the Funding Agreement, as amended.

**"Project:"** All of the federally and State authorized flood facilities to the extent to which they are within the Local Maintaining Agency's boundaries.

**"Project Site:"** The location of the Project.

**"Standard Operation and Maintenance Manual:"** A document prepared by the Local Maintaining Agency and submitted to the State for review, comment and approval that will govern the operation, maintenance, repair, replacement and rehabilitation of the Project. This manual will include all manuals related to the Project and facilities covered by this OMRR&R agreement, including those prepared by the Corps and/or Board for flood, ecosystem, habitat, mitigation or other purposes and any other such manuals.

**"State:"** The State of California, acting by and through the Board.

**"State Plan of Flood Control:"** The state and federal flood control works, lands, programs, plans, conditions; and mode of maintenance and operations described in Cal. Pub. Res. Code § 5096.805(j).

SECTION I: Obligations of the Local Maintaining Agency.

A. General Obligations. The Local Maintaining Agency agrees to the following:

1. To perform OMRR&R for the EIP Project, including all mitigation features of the EIP Project, without limitation, in accordance with the EIP Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duties of the Local Maintaining Agency to perform OMRR&R for all Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Local Maintaining Agency pursuant to this paragraph are described further in Section I-B below.
2. To defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as, but not limited to, their successors and assigns, free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this OMRR&R Agreement, including but not limited to any claims or damages arising from the construction of the EIP Project and performance of OMRR&R under this Agreement.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

1. The Local Maintaining Agency hereby accepts responsibility for OMRR&R of the EIP Project. The Local Maintaining Agency agrees that it will be responsible for OMRR&R of the EIP Project as further explained in: (1) the Standard Operation and Maintenance Manual for the Project and (2) any applicable Supplement to the Standard Operation and Maintenance Manual for the Project.
2. The Local Maintaining Agency as the Funding Recipient will prepare a Standard Operation and Maintenance Manual for the EIP Project as required by Board permits. The Standard Operation and Maintenance Manual for the EIP Project or Functional

Portion of the EIP Project may be a stand-alone document or an amendment to the Standard Operation and Maintenance Manual for the Project as directed by the Board. The Local Maintaining Agency acknowledges that changes to the Standard Operation and Maintenance Manual may be made by the State and the Corps before the document becomes final. The State may make reasonable changes but shall consult with Local Maintaining Agency prior to making such changes. Local Maintaining Agency shall be required to update the Standard Operation and Maintenance Manual as may be necessary or as required by the Central Valley flood Protection Board (CVFPB) and shall make a copy available to the State within three (3) days after the State so requests. Local Maintaining Agency shall be responsible for OMRR&R in accordance with any revised version of the Standard Operation and Maintenance Manual for the Project or any Supplement to the Standard Operation and Maintenance Manual.

3. The Local Maintaining Agency hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Local Maintaining Agency is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Local Maintaining Agency needs access to fulfill the obligations set forth in the paragraph, the State grants an irrevocable license to the Local Maintaining Agency to enter the land to fulfill its obligations under this OMRR&R Agreement.
4. If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code Section 12878 *et seq.*

If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of Water Code Section 12878 *et seq.*, then the State may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Project, or functional portion thereof, to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may, in its sole discretion, develop a work plan and present it to the Local Maintaining Agency with instructions that if the Local Maintaining Agency does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Local Maintaining Agency will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Local Maintaining Agency of responsibility to meet the Local Maintaining Agency's obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

C. Additional Obligations:

1. The Local Maintaining Agency shall annually review and, if appropriate or requested by the State, update the safety plan for the EIP Project prepared pursuant to the Funding Agreement or required by Cal. Water Code § 9650. The Local Maintaining Agency

agrees to use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan.

2. No later than June 30 of each calendar year the Local Maintaining Agency shall provide an annual Post Construction Performance Report to the Department, which may be included as part of the report provided pursuant to Water Code Section 9140.
  - (a) The Post Construction Performance Report shall generally use the following format:
    - Summary of the operations of the EIP Project;
    - Brief discussion of the EIP Project benefits;
    - Brief comparison and explanations for any differences between the expected versus actual EIP Project success in meeting the goals identified in the original State-Federal Flood Control System Modification Program (Early Implementation Projects) Grant Application;
    - Summary of costs and any additional costs and/or benefits deriving from the EIP Project; and
    - Any additional information relevant to or generated by the continued operation of the EIP Project, including any maintenance issues.
  - (b) The Department in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.
3. Local Maintaining Agency shall provide information to the Board as follows:
  - (a) No later than June 30 of each calendar year the Local Maintaining Agency shall certify that it has reviewed the Standard Operations and Maintenance Manual and that either: (1) no updates are needed to the Standard Operation and Maintenance Manual; or (2) the Standard Operation and Maintenance Manual has been updated.
  - (b) If requested to do so by the Board, the Local Maintaining Agency shall provide copies to the Board of the operation and maintenance reports required pursuant to AB 5 (Wolk), 2007 Cal. Stat. 366 (codified at Cal. Water Code § 9140(a)) that pertain to the Project.
  - (c) The Board in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.

## SECTION II: Hazardous Substances

The Local Maintaining Agency acknowledges State may incur obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; California Hazardous Substances Account Act, Calif. Health & Safety Code §§ 25310 *et seq.* or other statutes or regulations (collectively referred to as "state and federal Hazardous Substances Laws") on lands necessary for Project construction and OMRR&R to the extent the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. The Local Maintaining Agency agrees:

- A. That in the event that the Local Maintaining Agency discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the EIP Project contain reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Local Maintaining Agency shall promptly notify the State of that discovery if it can be reasonably anticipated that the discovery of reportable quantities of hazardous substances will require Local Maintaining Agency to incur response costs in excess of \$10,000.
- B. That in the event reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found in connection with the EIP Project, the Local Maintaining Agency shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Local Maintaining Agency. In the event that the Local Maintaining Agency fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Local Maintaining Agency's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Local Maintaining Agency shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Local Maintaining Agency concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That the Local Maintaining Agency shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Local Maintaining Agency shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, the Local Maintaining Agency shall indemnify and hold the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of this Section of the EIP Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Local Maintaining Agency of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Local Maintaining Agency for response or cleanup activity required under CERCLA

and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

### SECTION III: Authorization for Delegation or Subcontracting

The Local Maintaining Agency may delegate or subcontract its responsibilities under this OMRR&R Agreement. In performing the obligations called for in this OMRR&R Agreement, the Local Maintaining Agency shall notify the State when it initially retains, employs, or uses any agencies or firms to perform work that is material to successful execution of the duties of Local Maintaining Agency under this OMRR&R agreement. The Local Maintaining Agency shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if the State deems its performance unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by the Local Maintaining Agency; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

### SECTION IV: Procedures for Reimbursing the State

To the extent Local Maintaining Agency fails to fulfill its obligations under this Agreement, the State may perform such obligations and bill Local Maintaining Agency accordingly. In such circumstances, the State shall provide an invoice to the Local Maintaining Agency for the costs of performing the work. Local Maintaining Agency agrees, subject to compliance with applicable state law, to reimburse the State by promptly paying any such invoices within thirty days.

### SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

### SECTION VI: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

### SECTION VII: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this Project, it may be necessary to amend this OMRR&R Agreement as required by the U.S. Army Corps of Engineers. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

### SECTION VIII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Maintaining Agency:

Levee District No. 1 of Sutter County  
Attention: General Manager  
243 Second Street, Yuba City, CA95991  
If to the Board:  
Central Valley Flood Protection Board  
ATTN: Executive Officer  
3310 El Camino Avenue, Suite LL40  
Sacramento, CA 95821

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

SECTION IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Attachment A to this OMRR&R Agreement.

SECTION X: Authority

The Local Maintaining Agency has provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

The Central Valley Flood Protection Board

By

Benjamin F. Carter  
President

Date: \_\_\_\_\_

Levee District One of Sutter County

By

Francis K. Silva  
President/Chairman, Board of Directors

Date: 6/16/10

Approved as to Legal Form  
and Sufficiency:

for Karin G. Shue  
Ward Tabor  
Assistant Chief Counsel

Approved as to Legal Form  
and Sufficiency:

Jesse Barton  
Special Counsel

Attachment A

STANDARD CONDITIONS

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Local Maintaining Agency for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Local Maintaining Agency shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Local Maintaining Agency to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF EIP PROJECT WITHOUT STATE PERMISSION:** Local Maintaining Agency shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the EIP Project, without prior permission of State. Local Maintaining Agency shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Local Maintaining Agency meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired, reimbursed or credited with State funds be remitted to State.
7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

11. **SEVERABILITY:** Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. **WAIVER OF RIGHTS:** None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties hereto that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this OMRR&R Agreement should Local Maintaining Agency fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default by the Funding Recipient under paragraph 20 of the Funding Agreement.
14. **INDEPENDENT CAPACITY:** Local Maintaining Agency, and the agents and employees of Local Maintaining Agencies, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST**
  - a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
  - c) **Employees of the Local Maintaining Agency:** Employees of the Local Maintaining Agency shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
16. **WORKERS' COMPENSATION:** Local Maintaining Agency affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Local Maintaining Agency affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.
17. **AMERICANS WITH DISABILITIES ACT:** By signing this OMRR&R Agreement, Local Maintaining Agency assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. **NONDISCRIMINATION CLAUSE:** During the performance of this OMRR&R Agreement, Local Maintaining Agency and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Local Maintaining Agency and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Local Maintaining Agency and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Local Maintaining Agency and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Local Maintaining Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. **DRUG-FREE WORKPLACE CERTIFICATION**

**Certification of Compliance:** By signing this OMRR&R Agreement, Local Maintaining Agency, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and, if such Act applies to Local Maintaining Agency, have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
  - 1. The dangers of drug abuse in the workplace,
  - 2. Local Maintaining Agency's policy of maintaining a drug-free workplace,
  - 3. Any available counseling, rehabilitation, and employee assistance programs, and
  - 4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this OMRR&R Agreement:
  - 1. Will receive a copy of Local Maintaining Agency's drug-free policy statement, and
  - 2. Will agree to abide by terms of Local Maintaining Agency's condition of employment, contract or subcontract.

**Suspension of Payments:** This OMRR&R Agreement may be subject to suspension of payments or termination, or both, and Local Maintaining Agency may be subject to debarment if the State determines that:

- a) Local Maintaining Agency, its contractors, or subcontractors have made a false certification, or

- b) Local Maintaining Agency, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.
20. UNION ORGANIZING: Local Maintaining Agency, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, Local Maintaining Agency, by signing this OMRR&R Agreement, hereby certifies that:
- a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
  - b) Local Maintaining Agency shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
  - c) Local Maintaining Agency shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
  - d) If Local Maintaining Agency makes expenditures to assist, promote, or deter union organizing, Local Maintaining Agency will maintain records sufficient to show that no State funds were used for those expenditures and that Local Maintaining Agency shall provide those records to the Attorney General upon request.
21. COMPUTER SOFTWARE: Local Maintaining Agency certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. DELIVERY OF INFORMATION, REPORTS, AND DATA: Local Maintaining Agency agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.
23. RIGHTS IN DATA: Local Maintaining Agency agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this OMRR&R Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act, Cal. Gov't Code §§ 6250 *et seq.* Local Maintaining Agency may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this OMRR&R Agreement, subject to appropriate acknowledgement of credit to State for financial support. Local Maintaining Agency shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
27. LOCAL MAINTAINING AGENCY NAME CHANGE: Approval of the State's Project Manager is required to change the Local Maintaining Agency's name as listed on this OMRR&R Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
28. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Local Maintaining Agency shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Attachment B  
Resolution No. 2010 - 06

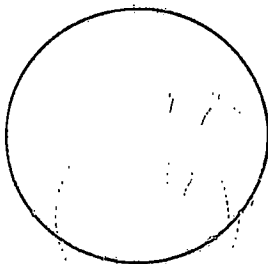
Resolved by the Board of Directors of  
Levee District One of Sutter County

Pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to Levee District One of Sutter County by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: the Lower Feather River Setback Levee At Star Bend have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires Levee District One of Sutter County to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of the Lower Feather River Setback Levee at Star Bend.

Therefore, the Chairman of the Board, Francis K. Silva of Levee District One of Sutter County, is hereby authorized and directed to sign an operation, maintenance, repair, replacement, and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.

Passed and adopted at a regular meeting of the Board of Directors of Levee District One of Sutter County on June 14, 2010

(Date)



Authorized Signature

*Francis K. Silva*

Printed Name

FRANCIS K. SILVA

Title

Chairman

Clerk/Secretary

*[Signature]*



STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NUMBER: 10-20

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION  
AGREEMENT BETWEEN THE CENTRAL VALLEY FLOOD PROTECTION BOARD  
AND LEVEE DISTRICT No. 1 OF SUTTER COUNTY (LD-1) FOR THE LOWER  
FEATHER RIVER SETBACK LEVEE PROJECT AT STAR BEND

WHEREAS, Levee District No.1 has entered into an Early Implementation Program (EIP) Funding Agreement with DWR, Funding Agreement 4600008139, dated 6/18/08, to obtain State cost share funding for the Lower Feather River Setback Levee Project at Star Bend.

WHEREAS, the Local Maintaining Agency (LMA) for the Lower Feather River Setback Levee Project at Star Bend is Levee District No.1 (LD-1)

WHEREAS, the LMA for the Lower Feather River Setback Levee Project at Star Bend is required to enter into an Operation, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) Agreement with the Central Valley Flood Protection Board (Board) as mandated in the EIP Funding Agreement;

NOW, THEREFORE, LET IT BE RESOLVED that the Central Valley Flood Protection Board:

1. Approves the Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (OMRR&R) for execution between the Board and LD-1 for the Lower Feather River Setback Levee Project at Star Bend Project
2. Delegates to the Board president the authority to execute the OMRR&R Agreement.

BY: \_\_\_\_\_  
Benjamin F. Carter  
President

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Butch Hodgkins  
Secretary

Date: \_\_\_\_\_

Approved as to Legal Form and Sufficiency

A handwritten signature in black ink, appearing to read 'Ward Tabor', is written over a horizontal line.

Ward Tabor  
Assistant Chief Counsel